APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM, 1967 — APRIL SESSION, 1968

Nos. 15847, 15930

DR. F. ALLEN RUTHERFORD, EDWARD J. CRONLEY, VERA MAE JEFFRIES, DOROTHY WILLIAMS, C. R. EASTER, CHESTER PLONSKI, and SALLY RANICH, *et al.*,

Appellants,

vs.

AMERICAN MEDICAL ASSOCIATION, *et al.*,

Appellees.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

June 23, 1967

Before HASTINGS, *Chief Judge*, and DUFFY, *Senior Circuit Judge* and SCHNACKENBERG, *Circuit Judge.*

HASTINGS, *Chief Judge.* This is an appeal from the district court's dismissal, on all counts, of plaintiffs' suit for a permanent injunction against defendants, requiring them to cease interfering, in any way, with the national distribution of an alleged cancer drug, Krebiozen.

Jurisdiction in the case was asserted to arise from issues of constitutional import and from the civil rights statutes, 42 U.S.C.A. §§ 1983, 1984, 1985.

Plaintiffs are Dr. Allen Rutherford and a number of cancer patients who have been treated for their disease by the use of Krebiozen.

The mammoth amended complaint — 243 pages, excluding exhibits — which contained eight counts, is difficult to characterize. Most of the complaint is general, irrelevant, vituperative, scandalous and conclusory. Its burden, presumably set down in the hope of establishing a conspiracy of medical and health organizations and institutions, is a full frontal attack on defendants, the American Medical Association, the American Cancer Society, the medical profession generally, the Board of Trustees of the University of Illinois, the Federal Food and Drug Administration (FDA), a number of employees of the foregoing and various individual defendants.

The objective of this attack is to show that the medical profession, with allied parties, purposefully suppresses innovations in medical therapy and that the named defendants have joined in this conspiracy. In essence and sympathetically viewed, the complaint is an outcry of hopeless, suffering cancer victims, who lack the funds required by the recognized cancer therapies and who believe in the ameliorative and curative properties of the now well publicized drug, Krebiozen. Supported by testimonials of Krebiozen's efficacy, they place hope in this drug, but they find it withheld from interstate distribution,[1] and they lay the blame for its unavailability upon the defendants.

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[1] Krebiozen is available within Illinois and may be manufactured and distributed within other states.

Krebiozen is unavailable in interstate commerce. As a new drug, it has not received an approval, required by the Food, Drug and Cosmetic Act, 21 U.S.C.A., § 355,[2] which would permit its introduction into interstate commerce.

Section 355 of the Act establishes an introduction procedure for new drugs, designed to elicit sufficient scientific information about a drug, including reports on investigations, composition, methods and precautions in manufacture, and samples of the drug, which will permit an intelligent assessment of its safety and efficacy. Section 355(i) provides an alternative procedure for drugs intended solely for investigational use. Compliance with a comprehensive set of regulations promulgated by the Secretary of Health, Education and Welfare is required.

Krebiozen has complied with neither procedure. In 1963, a § 355(i) notice was filed, but was quickly withdrawn. Another notice was filed in 1966, but it did not approach compliance with the regulations. As it now stands, Krebiozen has not been approved, exempted, or denied approval under § 355, and no application with respect to Krebiozen is pending before the FDA.

In a previous case of this kind, we held that an essential element of the plaintiff's case is a showing that under the appropriate standards, Krebiozen would be approved or exempted. *Tutoki* v. *Celebrezze*, 7 Cir., 375 F. 2d 105 (1967). Since jurisdiction for judicial review of administrative action is statutory in this case, 21 U.S.C.A. §

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[2] "No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application filed pursuant to subsection (b) of this section is effective with respect to such drug." 21 U.S.C. § 355 (a).

355(h); *cf. A.F.L.* v. *Labor Board,* 308 U.S. 401 (1940), initial approval or exemption of a drug is within the primary jurisdiction of the FDA. *Tutoki, supra.* Only after action by the FDA is court review appropriate and provided for by statute. 21 U.S.C.A. § 355(h). *Cf. Turkel* v. *Food and Drug Administration, Dept. of H., E. & W.,* 6 Cir., 334 F.2d 844 (1964).

Plaintiffs contend, however, that as long as the alleged conspiracy remains unenjoined, it is immaterial whether or not Krebiozen is exempt from Government regulation. In their complaint, plaintiffs have alleged, in effect, that the FDA has systematically attempted to discredit Krebiozen and to prevent its introduction into commerce. It is argued that on a motion to dismiss, we must accept the truth of these allegations.

Accepting their truth arguendo, plaintiffs still have not shown that they have in good faith attempted to comply with the procedures established by Congress for the introduction of new drugs, nor has it been shown that the failure to apply can be attributed solely to the activities of the FDA and the defendants. The fact that compliance might be expensive and burdensome is not unfairness in the procedure, but a consequence of a reasonable Congressional scheme for the introduction of new drugs.

Without an attempted good faith application for approval or exemption, we have no jurisdiction to determine whether the FDA has illegally placed impossible or unreasonable conditions on approval or exemption, or has made requests for information impossible to fulfill, or whether the FDA has been dilatory, biased, or discriminatory. Until someone has attempted to comply with the Act with respect to Krebiozen, plaintiffs' appeal should be to the sponsors of the drug.

Plaintiffs further contend that the Act cannot regulate Krebiozen since, as it is to be distributed free of charge for investigational purposes, it is not in commerce. There is no merit in this argument, for regulation under the Commerce Clause is not limited to articles or activities for which there is a transfer for value. *U. S.* v. *Underwriters Assn.*, 322 U.S. 533 (1944); *Bell* v. *Porter*, 7 Cir., 159 F. 2d 117 (1946), cert. den., 330 U.S. 813 (1947).

Plaintiffs also contend that Krebiozen is exempt from the requirements of the Act because it is non-toxic. This argument is mistaken, for the new drug provisions of the Act, which prohibit introduction of new drugs without approval, apply without reservation to all new drugs. Even if Krebiozen is non-toxic as alleged, toxicity is not the sole criterion to be applied by the FDA to new drugs. Effectiveness of the drug as well as its safety and the safety of its manufacturing procedures is a relevant criterion. 21 U.S.C.A. § 355(d); *cf. United States* v. *Allan Drug Corporation*, 10 Cir., 357 F. 2d 713 (1966).

Plaintiffs argue that Krebiozen is not a drug, but a biological product not falling within the scope of the Food, Drug and Cosmetic Act. If Krebiozen is a biological product, however, it must meet the more stringent licensing provisions of the Public Health Service Act, 42 U.S.C.A. § 262, which it has not done. *Cf.* 21 C.F.R. §§ 130.2(a) and 130.3(g). We do not find a gap between the Food, Drug and Cosmetic Act and the Public Health Service Act which would leave Krebiozen unregulated under either statute.

Finally, we note that plaintiffs, because they have not shown that at least one of the defendants acted under color of state law to injure them or deny them a federally protected right, have not stated a cause of action under

the civil rights statutes. See *Kamsler* v. *M.F.I. Corp.*, 7 Cir., 359 F. 2d 752 (1966). In this case, only the University of Illinois can be considered a state agent. There is no legal requirement that the University of Illinois permit its personnel to experiment with Krebiozen or to endorse it, and plaintiffs have no more right to Krebiozen experimentation at the University of Illinois than they do at any research institution. The law does not require that innovations, good or bad, be investigated or accepted. Since plaintiffs have suffered no legal injury from the University's decision, they have no cause of action under the civil rights statutes.

In view of the various sufficient grounds for upholding the district court's dismissal of plaintiffs' suit, we have not considered questions regarding plaintiffs' standing, venue, or the propriety of the class action under Rule 23, Federal Rules of Civil Procedure.

This case was submitted to this court for decision on May 3, 1967, following the hearing of full oral argument. Subsequently, on June 12, 1967, plaintiffs filed a "Petition for Certification of Six Questions by the United States Court of Appeals for the Seventh Circuit to the United States Supreme Court as Provided by Section 1254, Title 28, U.S.C.A., and Rule 37 of the Rules of the Supreme Court." They further request a stay of any consideration of this appeal until such questions are answered by the Supreme Court.

The first four questions asked are jurisdictional in nature and involve the construction of various federal statutes considered herein, *inter alia*, the Federal Food, Drug and Cosmetic Act, the Public Health Service Act, the Sherman

Antitrust Act and the Federal Civil Rights Act. The fifth and sixth questions concern a determination of whether the American Medical Association and the American Cancer Society are subject to the restrictions and prohibitions contained in the Fourteenth Amendment and the Civil Rights Act.

It appears to be well settled that certification of questions pursuant to 28 U.S.C.A. § 1254 rests in the discretion of this court and cannot be invoked by a party as a matter of right. We respectfully decline to exercise our discretion to certify the questions submitted to the Supreme Court and plaintiffs' motion for certification is now denied. In view of our disposition of this appeal, plaintiffs are left with the right to seek review thereof by petition to the Supreme Court for a writ of certiorari.

For the reasons set out in this opinion, the judgment of the district court dismissing plaintiffs' action for injunctive relief is affirmed.

AFFIRMED.....

A true Copy:
Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Judge's Chambers
Bernard M. Decker, Judge
Chicago 60604

July 18, 1966

OPINION OF DISTRICT COURT

Re: *Dr. F. Allen Rutherford, et al.* v.
The American Medical Association, Inc., etc., et al. — No. 66 C 7

Gentlemen:

I have considered the complaint, the motions to dismiss and the briefs that have been filed. The motions are granted.

Plaintiffs, a physician and ten victims of cancer, seek a permanent injunction against numerous alleged present obstacles to national distribution and use of Krebiozen, a purported treatment for cancer. Defendants include the American Medical Association ("AMA"), the American Cancer Society ("ACS"), the University of Illinois ("UI"), employees of these three corporate defendants, and numerous individuals. Plaintiffs charge a complex and far-reaching conspiracy among the defendants to prevent the use and success of Krebiozen as a cancer drug by means of varied formal and informal devices; it is this to which the 243-page amended complaint is directed. Jurisdiction is alleged under the Civil Rights statute, 42 U.S.C. sections 1983-1985, the anti-trust laws, 15 U.S.C. section 1, et seq., and the Food, Drug, and Cosmetic Act, 21 U.S.C. sections 301, et seq.

This suit was filed on January 3, 1966; it is similar in most important respects to the suit filed by other plaintiffs on January 8, 1965, which I dismissed on January 25, 1966, for reasons set forth in a letter of opinion. In the present suit, a motion for a temporary injunction was denied on February 4, 1966, in an opinion delivered from the bench. A similar motion was denied on May 13, 1966; denial of the second motion is presently being appealed.

Defendants have filed motions to dismiss based on a wide variety of grounds. On March 29, 1966, I requested briefs from the parties on some of these grounds, including the ground of primary jurisdiction. For the reason set forth below, I find that this suit must be dismissed on all counts, as to all defendants.

I.

Plaintiffs seek an injunction against alleged present and future acts of defendants which interfere with the use of Krebiozen and investigation of it. In light of the fact that only prospective relief is sought, the complaint contains a fundamental and fatal defect. All of the alleged acts of defendants can be of no consequence and can cause plaintiffs no injury if Krebiozen is not available for distribution, use or investigation. The complaint does not sufficiently show that the sponsors of Krebiozen, who are not parties to this suit, are able or willing to provide Krebiozen for any purpose at some future date if plaintiffs succeed here. Without sufficient allegation of the availability of Krebiozen, this lawsuit is moot on the face of the complaint. This court does not have power to hear a moot case or issue an order which can have no effect on the rights or interests of the parties. If there is no Krebiozen, there is no order this court can enter which will give plaintiffs the ultimate relief they seek.

In view of the fact that the complaint states, on its face, a moot cause of action, the entire complaint as to all defendants is dismissed.

II.

The prayer for relief seeks an order enjoining defendants "from impeding, hindering or impairing the free uncommercial flow of Krebiozen interstate . . . to the physicians of the plaintiffs . . . for the purpose of continued human experimentation on the plaintiffs by their doctors . . . ." Krebiozen is a "new drug"; introduction of new drugs into interstate commerce is governed by 21 U.S.C. Section 355, subsection (a) of which provides, as follows:

> "No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application filed pursuant to subsection (b) of this section is effective with respect to such drug."

Subsection (b) provides for a detailed application, including reports of tests made of the drug, a statement of the composition of the drug, a description of the methods and conditions of manufacture, and samples of the drug if requested. The application must be filed by a person who wishes to "introduce or deliver for introduction into interstate commerce" the drug in question.

A second procedure for gaining legal access to the channels of interstate commerce for a new drug is available under section 355(i), which provides:

> "The Secretary shall promulgate regulations for exempting from the operation of the foregoing subsections of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs."

Exhaustive regulations have been promulgated; they appear at 21 C.F.R. section 103.3. Compliance with these regulations no doubt would require the expenditure of substantial time and effort by the sponsor of an investigational drug.

As the matter appears before me today, the provisions of section 355 offer an open door to the channels of interstate commerce for Krebiozen. The failure of the substance's sponsors to employ the statutory provisions is the present obstacle to unfettered interstate distribution. In 1963, a section 355(i) notice was filed; but it was withdrawn shortly after filing. In April, 1966, the substance's sponsors filed a "Notice of Claimed Investigational Exemption" for Krebiozen with the Food and Drug Administration ("FDA") Commissioner. As the sponsor must have known, the notice did not approach compliance with the clear requirements of the section 355(i) regulations. Looking over the history of the relationship between Krebiozen and the FDA for the last several years, I find a comparatively consistent refusal to use the avenue for interstate distribution of drugs which Congress has established.

Plaintiffs claim that Krebiozen's sponsors need not invoke the remedy provided by Congress. However, it is too well settled to require extended discussion that where Congress creates an expert administrative agency to perform a specific regulatory task which requires expertise, the agency cannot be bypassed. All matters properly within the agency's scope of authority must be referred to this agency for action in the first instance.

This rule applies to Krebiozen, even though the complaint in this case is framed in terms of the civil rights and anti-trust statutes. Clearly, until an invocation of

the provisions of section 355 has proved fruitless, there is no possible equitable relief that can be granted that does not directly interfere with the FDA's jurisdiction. Whatever injury plaintiffs presently suffer as a result of restrictions on interstate distribution of Krebiozen is the result of the operation of the Food, Drug and Cosmetic Act, and not of illegal activity by the defendants.

Even if the FDA were to act arbitrarily, unfairly or on the basis of a mistake of law, resort to a United States District Court is not permitted. The entire regular course of appeal from FDA action must first be employed. In this case, since direct appeal from a holding that a Section 355 (i) application is insufficient cannot be taken, Krebiozen's sponsors would have to file a section 355(b) application. If that were denied then the sponsors could appeal FDA action under both section 355(i) and section 355(b) in the appropriate Court of Appeals. Section 355(h); *Turkel* v. *Food and Drug Administration*, 334 F. 2d 833 (6th Cir.), *cert den.* 379 U.S. 990 (1964).

The entire regulatory scheme, including the appellate procedure is reasonable. Although compliance with it may impose substantial burdens on Krebiozen's sponsors, these burdens are reasonable in light of the public purpose to be served. Under the doctrine of primary jurisdiction. I cannot enter an order bypassing this regulatory scheme, particularly where compliance with it has not even been seriously attempted. Until the sponsors of Krebiozen choose to comply with the law, this court cannot entertain a suit which seeks to bypass that law.

This general rule of primary jurisdiction may give way if there is a non-frivolous challenge to the constitutionality of the statute establishing the regulatory scheme. Plain-

tiffs attempt to raise such an issue here. The argument is that Krebiozen is to be distributed free of charge solely for investigational purposes and that therefore it is not in commerce. If Krebiozen is indeed not in commerce, regulation of it would be beyond Congress' constitutional authority.

Plaintiffs' argument, even if they have standing to raise it, is plainly without merit. Congress may constitutionally regulate interstate shipments which do not involve purchase or trade. See e.g., *United States* v. *Underwriters Ass'n.*, 322 U.S. 533, 549-50 (1944); *Hoke* v. *United States*, 227 U.S. 308 (1913). The fact that Krebiozen is intended for investigational use by private doctors and their patients does not exempt it from the broad scope of congressional power, as long as it is transported across state lines.

Furthermore, there is no unconstitutional interference with the doctor-patient relationship. The freedom of a doctor to care for a patient according to his own judgment does not extend to an opening of the channels of interstate commerce to any substance the doctor seeks on the doctor's own terms. Congress has the power to impose reasonable regulations on the interstate traffic of drugs, even though such regulation necessarily has some impact on some doctor's practice of medicine.

Because I find no conflict with the Constitution in the application of 21 U.S.C. section 355 to Krebiozen, I find no basis for bypassing the reasonable regulatory scheme in this case. Until Krebiozen's sponsors comply with the law, this court cannot hear a case seeking unfettered interstate distribution of the substance regardless of what basis is alleged for this relief. For these reasons, so much of the amended complaint as seeks an injunction against interference with interstate distribution of Krebiozen would have to be dismissed as to all defendants, were the entire case not otherwise disposed of.

III.

Relief is sought under the Civil Rights statutem 42 U.S.C. sections 1983-1985. A prequiaite to success under these sections is a fact finding that defendants are or will be acting under color of state law. Ordinarily at least one participant in the alleged misconduct must be a state institution, agency or employee. In the present case only UI and some of its employees among all of the named defendants, appear to be direct agents of the state.

Since this this is a suit for an injunction, the action to be enjoined must be taken under color of state law. The only action by UI or its employees alleged in the complaint which has any current relevance is the alleged official policy of the University prohibiting any person connected with UI from having anything at all to with Krebiozen. While this may raise some civil rights problems for some people within UI, it does not directly injure plaintiffs or deny them any federally protected right. This official UI policy presents no significant barrier to active and thorough use and investigation of Krebiozen. Consequently, the complaint fails to state a claim upon which relief can be granted against UI or its employees under the Civil Rights statute.

No other named defendant is alleged to be a state agent. The mere fact that AMA and ACS are corporations owing their existence to state law does not bring them within the scope of the "under color" requirement. Since the only defendants who could be directly liability under sections 1983-1985 are not liable in this case, the other defendants cannot be held under a conspiracy or joint action theory. Cf. *United States* v. *Price*, 383 U.S. 787 (1966).

For the above reasons, so much of the amended complaint as seeks relief under 42 U.S.C., sections 1983-1985 would be dismissed as to all defendants if this suit were not otherwise disposed of.

IV.

The amended complaint is 243 pages long; it contains 1027 paragraphs (plaintiffs have numbered them; its prayer for relief runs six pages. It is redundant, large portions of it are immaterial; many paragraphs contain clearly scandalous matter. This amended complaint exhibits a rather thorough misconception of the function of a complaint and its proper functions. This amended complaint demonstrates that the drafter is either unable or unwilling to conform to the rather simple requirements of the Federal Rules of Civil Procedure, particularly Rules 8 and 9. This amended complaint fails in the elementary task which the Rules require it to perform: giving the parties and the court fair, clear and efficient notice of what it is plaintiffs are charging and what relief they seek.

For the purpose of more clearly indicating the magnitude of the problem presented by the amended complaint, I have listed below the paragraphs that would be stricken pursuant to Rule 12(f) from the first 75 pages, were the Herculean task of repair to be undertaken by this court. At the very minimum, the following paragraphs, and parts of paragraphs, would be stricken: 10 (last two sentences only), 11, 16, 17, 19, 20 (second sentence only), 21-24, 26, 32-34, 36-38, 43, 44, 52-58, 65, 69, 71-74, 76-78, 80, 90-95, 97-117, 123-125, 127-134, 136-142, 202, 203, 219, 220, 231-233, 255-257, 285-303, 306-309, 310-313 (however, exhibit 2 speaks for itself). This task was not pursued beyond page 75; the point has been made.

It is difficult for a court to fashion a proper response to such a grossly improper document. Courts ought to resist the temptation to simply dismiss a case and thereby delay or deny a proper hearing to plaintiffs simply because an attorney has ignored the basic precepts of pleading. None-

theless, an amended complaint such as this one offers no other recourse. It is wholly inadequate as it stands; selective striking to conform it to federal pleading standards would not only be an enormous task, but would also thoroughly dismember the document, perhaps leaving it inconsistent with plaintiffs' intent. Under these circumstances this court has no choice but to strike the entire complaint and dismiss the case. This is the course I would follow were this case not otherwise disposed of.

V.

Even assuming that any or all of the individual defendants are guilty of past illegal acts, the amended complaint does not sufficiently allege a threat of such acts in the future to permit an injunction to issue. Most of the individual defendants appear briefly in events which occurred three or more years ago; the amended complaint does not sufficiently allege that any of them can or will act in a similar way in the future. Under these circumstances, plaintiffs would not be entitled to an injunction. Consequently, this suit would be dismissed as to all individual defendants on all counts were it not otherwise disposed of.

VI.

Several questions of law remain unanswered in this case, including such questions as standing, venue and whether this is a proper Rule 23 class action. In light of the numerous other grounds for dismissing this suit outlined above, the court has not explored these additional questions.

For the reasons set forth in this letter of opinion, the complaint is dismissed as to all defendants of all counts. The order has been entered today.

Very truly yours,
Bernard M. Decker
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Tuesday, May 16, 1967

Before

Hon. JOHN S. HASTINGS, Chief Judge
Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. WALTER J. CUMMINGS, JR., Circuit Judge

DR. F. ALLEN RUTHERFORD, ET AL.,
Appellants-Petitioners,

Nos. 15847, 15930 VS.

AMERICAN MEDICAL ASSOCIATION, ET AL.,
Appellees-Respondents.

ORDER

This cause came on to be heard upon appellants-petitioners' Motion to Dispose of Pending "Petition for Rehearing and Reconsideration before Entire Court of Eight Judges," which motion asserts "Up until this date no action has been taken by the Court of Appeals on this Petition for Rehearing. . . ."

And the court being fully advised finds that the said motion is directed at the order of this court entered November 2, 1966 denying a petition for mandatory temporary injunction pending appeal; that on November 16,

1966 there was filed in this court a "Petition for Rehearing and Reconsideration before Entire Court of Eight Judges," and that each of the eight active members of this court separately voted to deny said petition for rehearing of the November 2, 1966 order on the following dates: Kiley, J. November 30, 1966; Cummings, J. Novemer 30, 1966; Swygert, J. December 1, 1966; Knoch, J. December 1, 1966; Castle, J. December 1, 1966; Schnackenberg, J. December 1, 1966; Hastings, C. J. December 1, 1966; and Fairchild, J. December 6, 1966; and that inadvertently the result of this unanimous vote was not communicated to the Clerk of the Court for entry on the record of this court.

It Is Therefore Ordered that the Clerk of this court be and he is hereby ordered to enter an order denying the petition for rehearing and reconsideration instanter, *nunc pro tunc* as of December 6, 1966, the date of the last vote cast as aforesaid.

And It Is Further Ordered that the motion to dispose of pending "Petition for Rehearing and Reconsideration before Entire Court of Eight Judges" is not entertained for the reason that the motion, in view of the foregoing findings, has become moot.

APPENDIX D

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
November 2, 1966

Before

Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge

DR. F. ALLEN RUTHERFORD, ET AL.,
Petitioners-Appellants,

No. 15847 vs.

AMERICAN MEDICAL ASSOCIATION, ET AL.,
Respondents-Appellees.

ORDER

This cause came on to be heard upon the Verified Petition for a Mandatory Temporary Injunction Pending Appeal; on the Answers of the American Medical Association, the Board of Trustees of the University of Illinois, the American Cancer Society, and of several respondents represented by the United States Attorney; and on the replies to the answers; and upon supporting briefs and memoranda. And the court being fully advised,

It Is Ordered that the Verified Petition for a Mandatory Temporary Injunction Pending Appeal be, and it is hereby DENIED.

APPENDIX E

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Wednesday, November 2, 1966

Before

Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge

EDWARD J. CRONLEY, SALLY RANISH, VERA MAE JEFFRIES, C. R. EASTER, DOROTHY WILLIAMS and CHESTER PLONSKI,
Plaintiffs-Appellants,
No. 15930 vs.
THE AMERICAN MEDICAL ASSOCIATION, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration of the petition in behalf of Edward J. Cronley, Vera Mae Jeffries, C. R. Easter, Dorothy Williams, and Chester Plonski, for permission to appeal as poor persons as provided by Section 1915, Title 28, U.S.C.A.,

It Is Hereby Ordered that leave be granted to the aforesaid petitioners-appellants to docket their appeal in this Court instanter *in forma pauperis* and that, as to said petitioners-appellants, the printing of their appendix and brief be waived provided that they file at least six (6) typewritten copies of their brief in lieu of printing same and serve at least one copy thereof on counsel for defendants-appellees.

It Is Further Ordered that this appeal be consolidated with appeal No. 15847—Dr. F. Allen Rutherford, et al. v. The American Medical Association, Inc., et al., for the purpose of hearing and disposition in this Court.

It Is Further Ordered that the motion of petitioner Edward J. Cronley to make the transcript of proceedings of September 30, 1966, in the District Court part of the record of proceedings now pending in petition to appeal *in forma pauperis* in this Court be, and the same is hereby denied.

APPENDIX F

CONSTITUTION OF UNITED STATES

AMENDMENT IX—CONSTRUCTION OF ENUMERATED RIGHTS

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X—RESERVED POWERS TO STATES

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Am., Art. 14, § 5

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

TITLE 15, U.S.C.

26. Injunctive relief for private parties—Exception.—Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties,

against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this act [§§ 13, 14, 18, and 19 of this title], when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the act to regulate commerce, approved February fourth, eighteen hundred eighty-seven [49 § 1 et seq.] in respect of any mater subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. (Oct. 15, 1914, c. 323, § 16, 38 Stat. 737.)

TITLE 28, U.S.C.

§ 1331. Federal question; amount in controversy

The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. June 25, 1948, c. 646, 62 Stat. 930.

§ 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954, c. 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub.L. 85—315, Part III, § 121, 71 Stat. 637.

TITLE 42, U.S.C.

§ 262. Regulation of biological products—Intrastate and interstate traffic; suspension or revocation of license as affecting prior sales

(a) No person shall sell, barter, or exchange, or offer for sale, barter, or exchange in the District Court of Columbia, or send, carry, or bring for sale, barter, or exchange from any State or possession into any other State or possession or into any foreign country or from any foreign country into any State or possession, any virus,

therapeutic serum, toxin, antitoxin, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man, unless (1) such virus, serum, toxin, antitoxin, or other product has been propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked licenes, issued by the Secretary as hereinafter authorized, to propagate or manufacture, and prepare such virus, serum, toxin, antitoxin, or other product for sale in the District of Columbia, or for sending, bringing, or carrying from place to place aforesaid; and (2) each package of such virus, serum, toxin, antitoxin, or other product is plainly marked with the proper name of the article contained therein, the name, address, and licence number of the manufacturer, and the date beyond which the contents cannot be expected beyond reasonable doubt to yield their specific results. The suspension or revocation of any license shall not prevent the sale, barter, or exchange of any virus, serum, toxin, antitoxin, or other product aforesaid which has been sold and delivered by the licensee prior to such suspension or revocation, unless the owner or custodian of such virus, serum, toxin, antitoxin, or other product aforesaid has been notified by the Secretary not to sell, barter, or exchange the same.

§ 284. Functions of Council

The Council is authorized—

Review of research problems

(a) To review research projects or programs submitted to or initiated by it relating to the study of the cause, prevention, or methods of diagnosis and treatment of Cancer, and certify approval to the Surgeon General, for prosecu-

tion under section 282 of this title, of any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause, prevention, or methods of diagnosis and treatment of cancer;

Collection and dissemination of information

(b) To collect information as to studies which are being carried on in the United States or any other country as to the cause, prevention, and methods of diagnosis and treatment of cancer, by correspondence or by personal investigation of such studies, and with the approval of the Surgeon General make available such information through the appropriate publications for the benefit of health agencies and organizations (public or private), physicians, or any other scientists, and for the information of the general public;

Review of applications by research institutions for grants-in-aid

(c) To review applications from any university, hospital, laboratory, or other institution whether public or private, or from individuals, for grants-in-aid for research projects relating to cancer, and certify to the Surgeon General its approval of grants-in-aid in the cases of such projects which show promise of making valuable contributions to human knowledge with respect to the cause, prevention, or methods of diagnosis or treatment of cancer;

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities

secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

§ 1984. Same; review of proceedings

All cases arising under the provisions of this Act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court. Mar. 1, 1875, c. 114, § 5, 18 Stat. 337.

§ 1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) If two or more persons in any State or Territory Obstructing justice; intimidating party, witness, or juror conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account

of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons with such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of

the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R.S. § 1980.

Federal Food, Drug, and Cosmetic Act

21 U. S. C. 355.

(a) No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application filed pursuant to subsection (b) is effective with respect to such drug.

(b) Any person may file with the Secretary an application with respect to any drug subject to the provisions of subsection (a). Such persons shall submit to the Secretary as a part of the application (1) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the Secretary may require; and (6) specimens of the labeling proposed to be used for such drug.

(c) Within one hundred and eighty days after the filing of an application under this subsection, or such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall either —

(1) approve the application if he then finds that none of the grounds for denying approval specified in subsection (d) applies, or

(2) give the applicant notice of an opportunity for a hearing before the Secretary under subsection (d) on the question whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within thirty days after such notice, such hearing shall commence not more than ninety days after the expiration of such thirty days unless the Secretary and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within ninety days after the date fixed by the Secretary for filing final briefs.

(d) If the Secretary finds, after due notice to the applicant in accordance with subsection (c) and giving him an opportunity for a hearing, in accordance with said subsection, that (1) the investigations, reports of which are required to be submitted to the Secretary pursuant to subsection (b), do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; (2) the results of such tests show that such drug is unsafe for use under such conditions or do not show that such drug is safe for use under such conditions; (3) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity; (4) upon the basis of the information submitted to him as part of the application, or upon the

basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions; or (5) evaluated on the basis of the information submitted to him as part of the application and any other information before him with respect to such drug, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof; or (6) based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; he shall issue an order refusing to approve the application. If, after such notice and opportunity for hearing, the Secretary finds that clauses (1) through (6) do not apply, he shall issue an order approving the application. As used in this subsection and subsection (e), the term "substantial evidence" means evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

(e) The Secretary shall, after due notice and opportunity for hearing to the applicant, withdraw approval of an application with respect to any drug under this section if the Secretary finds (1) that clinical or other experience, tests, or other scientific data show that such drug is unsafe for use under the conditions of use upon the basis of which the application was approved; (2) that new evidence of clinical experience, not contained in such application or

not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; or (3) on the basis of new information before him with respect to such drug, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof; or (4) that the application contains any untrue statement of a material fact: Provided, That if the Secretary (or in his absence the officer acting as Secretary) finds that there is an imminent hazard to the public health, he may suspend the approval of such application immediately, and give the applicant prompt notice of his action and afford the applicant the opportunity for an expedited hearing under this subsection; but the authority conferred by this proviso to suspend the approval of an application shall not be delegated. The Secretary may also, after due notice and opportunity for hearing to the applicant, withdraw the approval of an application with respect to any drug under this section if the Secretary finds (1) that the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain such records or to make required reports, in accordance with a regulation or order under subsection (j), or the applicant has refused to permit access to, or copying or verification of, such records as required by paragraph (2) of such subsection; or (2) that on the basis

of new information before him, evaluated together with the evidence before him when the application was approved, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of; or (3) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the labeling of such drug, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of. Any order under this subsection shall state the findings upon which it is based.

(f) Whenever the Secretary finds that the facts so require, he shall revoke any previous order under subsection (d) or (e) refusing, withdrawing, or suspending approval of an application and shall approve such application or reinstate such approval, as may be appropriate.

(g) Orders of the Secretary issued under this section shall be served (1) in person by any officer or employee of the Department designated by the Secretary or (2) by mailing the order by registered mail or by certified mail addressed to the applicant or respondent at his last-known address in the records of the Secretary.

(h) An appeal may be taken by the applicant from an order of the Secretary refusing or withdrawing approval of an application under this section. Such appeal shall be taken by filing in the United States court of appeals for the circuit wherein such applicant resides or

has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a written petition praying that the order of the Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm or set aside such order, except that until the filing of the record the Secretary may modify or set aside his order. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary or unless there were reasonable grounds for failure so to do. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If any person shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the setting aside of the original order. The judgment of the court affirming or setting aside any such order of the Secretary

shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this subsection shall not, unless specifically ordered by the court to the contrary, operate as a stay of the Secretary's order.

(i) The Secretary shall promulgate regulations for exempting from the operation of the foregoing subsections of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs. Such regulations may, within the discretion of the Secretary, among other conditions relating to the protection of the public health, provide for conditioning such examption upon —

(1) the submission to the Secretary, before any clinical testing of a new drug is undertaken, of reports, by the manufacturer or the sponsor of the investigation of such drug, of preclinical tests (including tests on animals) of such drug adequate to justify the proposed clinical testing;

(2) the manufacturer or the sponsor of the investigation of a new drug proposed to be distributed to investigators for clinical testing obtaining a signed agreement from each of such investigators that patients to whom the drug is administered will be under his personal supervision, or under the supervision of investigators responsible to him, and that he will not supply such drug to any other investigator, or to clinics, for administration to human beings; and

(3) the establishment and maintenance of such records, and the making of such reports to the Secretary, by the manufacturer or the sponsor of the

investigation of such drug, of data (including but not limited to analytical reports by investigators) obtained as the result of such investigational use of such drug, as the Secretary finds will enable him to evaluate the safety and effectiveness of such drug in the event of the filing of an application pursuant to subsection (b).

Such regulations shall provide that such exemption shall be conditioned upon the manufacturer, or the sponsor of the investigation, requiring that experts using such drugs for investigational purposes certify to such manufacturer or sponsor that they will inform any human beings to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such human beings or their representatives, except where they deem it not feasible or, in their professional judgment, contrary to the best interests of such human beings. Nothing in this subsection shall be construed to require any clinical investigator to submit directly to the Secretary reports on the investigational use of drugs.

(j) (1) In the case of any drug for which an approval of an application filed pursuant to this section is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, of data relating to clinical experience and other data or information, received or otherwise obtained by such applicant with respect to such drug, as the Secretary may by general regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination, whether there is

or may be ground for invoking subsection (e) of this section: Provided, however, That regulations and orders issued under this subsection and under subsection (i) shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide, where the Secretary deems it to be appropriate, for the examination, upon request, by the persons to whom such regulations or orders are applicable, of similar information received or otherwise obtained by the Secretary.

(2) Every person required under this section to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

NEW DRUG REGULATIONS
under the
FEDERAL FOOD, DRUG, AND COSMETIC ACT

§ 130.3 *New drugs for investigational use; exemptions from section* 505(a).

(g) A "Notice of claimed investigational exemption for a new drug" which pertains to a product subject to the licensing provisions of the Public Health Service Act of July 1, 1944 (58 Stat. 682, as amended; 42 U.S.C. 201 et seq.), should be submitted initially to the Division of Biologics Standards, National Institutes of Health, Public Health Service, rather than to the Commissioner of Food and Drugs. Likewise, amendments of or supplements to such notice, and progress reports, consultations, or other communications with regard to the investigation, should be directed to the Division of Biologics Standards, which monitors the development of biological products subject to license under section 351 of the Public Health Service Act.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 52. ***Findings by the Court.***

(a) ***Effect.*** In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b). As amended Dec. 27, 1946, effective March 19, 1948.

Rule 65. *Injunctions*

(a) ***Preliminary; Notice.*** No preliminary injunction shall be issued without notice to the adverse party.

(b) ***Temporary Restraining Order; Notice; Hearing; Duration.*** No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be

served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

APPENDIX G

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1967

F. ALLEN RUTHERFORD, ET AL.,

Petitioners,

vs.

AMERICAN MEDICAL ASSOCIATION, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI.

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including 19 November, 1967.

/s/ Abe Fortas
Associate Justice of the Supreme
Court of the United States

Dated this 13th day of
September, 1967.